ANNUAL REPORT

Environmental Review Tribunal

April 1, 2000 to March 31, 2001

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Chair's Message

This year's Annual Report may seem humdrum to the reader; however, the year itself was not!

There was a great deal of activity at the Tribunal that is not fully reflected in this report. For example, the Chair and senior staff commenced the planning for the Niagara Escarpment Plan Review hearing. The Minister of Natural Resources, the Honourable John Snobelen, had advised the Niagara Escarpment Hearing Office that this Plan Review hearing should be non-adversarial and more consultative in nature. A great deal of effort and time went into establishing a hearing process which included the introduction of electronic filing and the posting of participants' written submissions, their questions and their responses on the Tribunal's website. In addition, oral hearings in four major areas of the Escarpment were planned. Information packages were made available to local libraries, the Niagara Escarpment Commission offices, and local M.P.P.'s offices. Advertisements in Escarpment area newspapers were also used to provide information to the public. Public input into the draft Rules of Procedure assisted the Hearing Officers in finalizing the Rules and in designing procedures for conducting the hearing prior to its commencement in the 2001/02 fiscal year. All staff and Tribunal members who worked on the process should be congratulated on the effectiveness of this process so far.

This year also saw the finalization of the integration of the Assessment and Appeal Boards by legislative amendments that not only changed the name of the two Boards to the Environmental Review Tribunal, but brought into effect other changes to reflect the administrative processes that the Tribunal now follows.

As a "new" Tribunal, it was decided that a Client Advisory Committee should be established to garner input about our activities, policies and rules. The following people volunteered to assist us:

- John Jackson, Consultant
- Ann M. Joyner, Partner, Dillon Consulting
- Richard D. Lindgren, Canadian Environmental Law Association
- Isabelle O'Connor, Legal Services Branch, Ministry of the Environment
- Craig Selby, District Manager, Ministry of Natural Resources

In addition to our usual consultation with stakeholders, this group will give the Tribunal an additional means of obtaining the views of our clients before final decisions on policy and procedural matters are made by it.

There was one incident during the year which should be mentioned. The Chair received his first formal complaint about the conduct of a member under the Tribunal's Complaints Policy. While the complainant actually withdrew his complaint, the Chair determined that some continuing education and skills development was needed to improve this member's adjudicative skills and that action was taken. The complaint demonstrated the need for agencies to have a complaints procedure as we were made aware of an area that needed improvement and an opportunity for learning, growth and change was created.

In reviewing our performance measures, I noted that the total number of cases received in 2000/01 was comparable to the previous year (187 in 2000/01 and 185 in 1999/00); however, the cost of running a hearing had a dramatic reduction of about 40%. In 1999/00, the average cost of a completed hearing in that year was $2,291.60 and in this fiscal year it dropped to $1,375.00. Our Alternative Dispute Resolution Program more than doubled from 26 to 55 cases and the average cost per session dropped from almost $200 to $127. The increase in Alternative Dispute Resolution sessions is partly due to the fact that counsel representing the Ministry of the Environment are participating in more mediations. While it is hard to predict whether the Tribunal can achieve further savings in the future, our efficiencies resulted in an under expenditure of our budget. Thus, I feel that I can safely report that we are operating in a fair, impartial but cost effective manner.

Staff and members continually review the Tribunal's processes. One such review led to discussions with staff at the Niagara Escarpment Commission and the Ministry of Natural Resources. As a result, an administrative change was made and the Minister provided blanket appointments allowing the Chair to assign hearing officers under the *Niagara Escarpment Planning and Development Act*. This simplified process has reduced the time needed to appoint a hearing officer and expedited the scheduling of hearings. Again, we have become more efficient without affecting our independence or our duty to be fair. This change demonstrates the ability of our Administrative Liaison Committee to act effectively.

Finally, I would like to say something about the Tribunal's staff and members and in that regard I am reminded of a quotation from Mary Ann Allison.

> Hire the best. Pay them fairly. Communicate frequently. Provide challenges and rewards. Believe in them. Get out of their way and they'll knock your socks off.

Every person at the Tribunal has "knocked my socks off" one way or another in 2000/01 and I want to express my personal thanks to them.

Carl F. Dombek, B.A., LL.B.
Chair

Tribunal Structure

The Tribunal's Mandate

The Environmental Review Tribunal is established under the *Environmental Review Tribunal Act, 2000*.

The Tribunal's mandate is to provide an independent review of decisions of the Director of the Ministry of the Environment, and a fair public hearing process that assesses the merits of proposed development projects, plans or programs that will have an impact on the environment.

The principal task of Tribunal members, who are Lieutenant Governor in Council appointees, is to conduct fair, efficient and impartial hearings. At these hearings, Tribunal members must consider all the evidence presented, and make a decision (or recommendation) with written reasons based on that evidence, in a manner that protects the environment and is consistent with the Tribunal's governing legislation. For a profile of the Tribunal members, refer to Appendix A.

Under the *Niagara Escarpment Planning and Development Act*, the Minister of Natural Resources appoints members of the Tribunal as Hearing Officers to conduct hearings and make recommendations concerning decisions of the Niagara Escarpment Commission ("NEC"). Since the proclamation of the *Red Tape Reduction Act, 2000*, S.O. 2000 c. 26 (Bill 110), development permit amendments agreed to by the parties prior to the hearing may be confirmed without the Minister's determination. Where development permit decisions of the NEC are appealed, all of the parties at the hearing agree on the conditions to be included in the permit, and the Hearing Officer indicates that a decision to issue the permit with the revised terms and conditions would be correct and should not be changed, the development permit is deemed to be confirmed by operation of law.

Under the *Niagara Escarpment Planning and Development Act*, the NEC appoints members of the Tribunal as Hearing Officers to conduct hearings for the purpose of receiving representations respecting proposed amendments to the Niagara Escarpment Plan, when objections have been made to the proposed amendments, or for the purpose of periodic review of the Plan.

The Tribunal functions as a quasi-judicial tribunal, subject to the rules of natural justice and the requirements of its governing legislation and the *Statutory Powers Procedure Act*. The Tribunal adjudicates applications and appeals under the following pieces of legislation: the *Environmental Assessment Act*, the *Environmental Protection Act*, the *Ontario Water Resources Act*, the *Pesticides Act*, the *Consolidated Hearings Act*, the *Environmental Bill of Rights, 1993* and the *Niagara Escarpment Planning and Development Act*. For an overview of the legislation, refer to Appendix B.

Core Businesses of the Tribunal

The Environmental Review Tribunal has five core businesses which are:

1. Hearings and Decision Making
2. Staff Processing of Hearings
3. Outreach
4. Alternative Dispute Resolution

1. Hearings and Decision Making

This core business is entirely in the hands of the Tribunal members, all of whom are Order-in-Council appointees. It includes hearings held by members and their written decisions.

All recommendations/decisions made under the *Niagara Escarpment Planning and Development Act* on development permit applications are required by legislation to be made within 30 days of the conclusion of the hearing or within such longer period as the Minister of Natural Resources may allow. Niagara Escarpment Plan amendment application decisions must be rendered no more than 60 days after the conclusion of the hearing or within such extended time as the NEC may specify. Tribunal decisions on the *Environmental Bill of Rights, 1993* leave to appeal applications are to be made within 30 days after the day on which the application is filed, unless the Tribunal determines that, because of unusual circumstances, a longer period is needed. In all other types of decisions, members will endeavor to make their decision within 30 days of the completion of the hearing.

2. Staff Processing of Hearings

This core business includes all administrative steps necessary to process an appeal/application from the date of the filing to the beginning of the hearing, including:

- screening the application to assess its compliance with the Act under which it was filed;
- assigning it to an appropriate hearing process;
- scheduling the hearing according to the Tribunal's practices and information specific to the appeal/application.

3. Outreach

The outreach core business of the Tribunal has both passive and active components. The passive component of the Tribunal's outreach core business consists of a number of initiatives. The Tribunal has created brochures, Rules and other publications explaining its role and procedures for distribution to clients upon request. Also, the Tribunal created and maintains a website which provides a wide variety of material on an ongoing basis. Website users have 24-hour

[illegible]

written hearing was developed in conjunction with electronic filing on the Internet. Also identified as a result of these sessions was the concept of holding the hearing in four locations across the Niagara Escarpment over a four-week period. These meetings were very helpful and the staff of the three organizations worked together successfully to plan a non-adversarial hearing process.

In a letter dated December 21, 2000, Minister Snobelen established the Terms of Reference for the Hearing. The Terms of Reference listed the following items to be considered in the Review:

- Estate Wineries
- Rural Tourism
- Signage
- Environmental Monitoring
- Intensive Recreational Development in Escarpment Parks and the Status of Land Trusts

The following items are to be either included as changes to the Plan maps and text that are factually in error or to update the Plan or maps to reflect changes that have occurred subsequent to approval of the current Niagara Escarpment Plan:

- Production of new Plan maps (reprint GIS 1:50,000 Plan maps only)
- Plan Errata
- Plan Text.

The Terms of Reference also gave direction on the conduct of the Plan Review Hearing. The *Niagara Escarpment Planning and Development Act* requires that a public hearing be conducted. In order to ensure an open and fair hearing process, the Hearing Officers, in adopting Rules of Procedure, were directed to:

- make the Review as non-adversarial as possible;
- provide for the submission and evaluation of written submissions prior to the hearing;
- increase to the degree possible the early resolution of issues.

In accordance with the direction given by Minister Snobelen in the Terms of Reference, the Niagara Escarpment Hearing Office issued draft Rules of Procedure and Procedural Order No. 1 on January 15, 2001. The Hearing Officers sought public consultation on these procedures and rules. These documents were posted on the Niagara Escarpment Hearing Office's website and were mailed to over 400 individuals/organizations identified as having an interest in the Niagara Escarpment from a mailing list supplied by the Niagara Escarpment Commission. The deadline for comments was February 15, 2001.

On March 1, 2001, the Hearing Officers issued Rules of Procedure for the Niagara Escarpment Plan Review Hearing which advised participants of how the hearing will be conducted and the requirements for participation. The Plan Review Hearing differs from other hearings conducted by the Niagara Escarpment Hearing Office because the Hearing Officers established both written and oral phases of the hearing. Interested persons who wished to participate in the written phase of the hearing were required to file a written submission by June 1, 2001. Participants who file written submissions by the deadline will have 30 minutes during the oral phase of the hearing to address the Hearing Officers. Those participants who did not file a written submission may be given 10 minutes during the oral phase of the hearing to address the Hearing Officers.

On March 1, 2001, the Hearing Officers issued two Procedural Order which outlined the procedures to be followed during the course of the hearing. During this fiscal year, the Hearing Officers spent a total of 11 days preparing for the hearing.

The Niagara Escarpment Hearing Office dedicated a portion of its website to allow public access to all written submissions filed, all written questions filed, and all answers to the written questions filed for the Plan Review Hearing. This website also included background documents and electronic forms to file submissions. The Niagara Escarpment Hearing Office has also provided public libraries in Hamilton, Milton, St. Catharines, Owen Sound and Orangeville, as well as the Niagara Escarpment Commission offices in Georgetown and Thornbury, with information on the hearing. Niagara Escarpment area libraries also provide access to the website for members of the public who do not have that capability.

Outreach

In its performance measures for this fiscal year, the Tribunal undertook to provide public education about the Tribunal's mandate and hearing process to interested government bodies, organizations and interest groups. The Tribunal made 20 presentations to local governments and schools. For a complete list of presentations, refer to Appendix C.

Website

The Tribunal monitors the public's use of its website. From its launch on July 1, 1998, more than 18,000 visitors have accessed the website, many to read and/or download the full text version of decisions issued since April 1998. Some individual decisions, since their posting on the website, have been downloaded more than 1,000 times. It is anticipated that website use will grow in the next fiscal year. For a list of the most popular downloads, refer to Appendix D.

As a result of comments received from users, the Tribunal revised its website to allow users to search the site by the area of interest, i.e. Environmental Review Tribunal, Office of Consolidated Hearings and the Niagara Escarpment Hearing Office.

Client Advisory Committee

The Environmental Review Tribunal sought résumés from interested individuals to form a Client Advisory Committee ("CAC"). The Tribunal reviewed the résumés and selected five to form the Committee. The Committee is composed of John Jackson, Ann Joyner, Richard Lindgren, Isabelle O'Connor and Craig Selby. The Committee's first task in February 2001 was to review a draft of the Tribunal's business plan and provide comments. A meeting with the CAC and the Tribunal members and staff has been scheduled early in the next fiscal year. The CAC will be asked to review new policies and procedures of the Tribunal, as requested, and will meet on a bi-annual basis.

Administrative Liaison Committee

In conjunction with the Director of the Ministry of the Environment's Environmental Assessment and Approvals Branch, the Tribunal's Chair invited the heads and senior staff of the Niagara Escarpment Commission, the Environmental Commissioner of Ontario and the Assistant Deputy Minister of Operations Division of the Ministry of the Environment to participate in a forum for the exchange of information and ideas related to the administrative operation of the Branch, the Commission, the Commissioner's office and the Tribunal, as they impact upon each other. The first meeting was held in April 1999, when the group approved Terms of Reference for the Committee. At a meeting held in October 1999, a representative from the Lands and Waters Branch of the Ministry of Natural Resources was invited to join the Committee. The Committee continues to meet on a regular basis. The Tribunal looks forward to future meetings with the Administrative Liaison Committee.

In-House Learning Program

The Tribunal has continued to conduct the Learning Program for its members and staff. The Learning Program provides half-day workshops and seminars on topics of relevance to the business of the Tribunal. This fiscal year, the Tribunal hosted a number of outstanding speakers. In conjunction with the government's initiative on cooperation, the Tribunal has expanded the invitation to attend to other organizations. Members and staff from: the Agriculture, Food and Rural Affairs Tribunal; the Ministry of the Environment; the Ministry of Natural Resources and the Niagara Escarpment Commission attended sessions. For a complete list of the Learning Program's workshops and seminars held in this fiscal year, refer to Appendix E.

Resources and Land Cluster

Similar to the 1996 "Wood" Commission's direction to restructure the Agency sector (which resulted in the Tribunal's administrative merger in December 1997), other corporate government initiatives have been and continue to be implemented to streamline services, reduce costs and improve efficiency. Notably, the Information and Information Technology Strategy project resulted in the realignment of service structures within government on the basis of "clusters".

There are seven clusters, one of which is the Resources and Land cluster composed of the Ministries of: Agriculture, Food and Rural Affairs; Natural Resources; Environment; and Northern Development and Mines.

In January 1999, the Tribunal decided to take a lead role in cluster-based agency service sharing. At the Chair's invitation, the heads of each of the Land cluster agencies, their senior staff and representatives of the former Management Board of Cabinet's Agency Reform Secretariat were invited to participate in a series of meetings. The meetings explored partnering of agencies that are not co-located in order to develop service-sharing arrangements. The benefits of sharing arrangements go beyond making internal services more efficient and cost-effective. They improve the quality of services offered to the public, and promote an agency culture open to new ideas.

As a result of initial meetings, a committee was created to ensure a structured approach to communication linkages. The committee meets as required to share ideas and innovations, and assist one another on issues of mutual interest. Four areas of sharing opportunities were identified at the initial meeting: case management systems; shared training for members and staff; design and maintenance of agency Internet sites; and combined public outreach presentations.

In the area of case management systems, the Tribunal shared its knowledge and best practices with other agencies with respect to its case management system and Internet technology. The Tribunal made its procedural manuals available to these agencies.

The Tribunal invited Land cluster agencies to its learning programs, and several agencies sent members and staff to sessions of mutual interest.

The Tribunal undertook to advise the committee of any public outreach presentations that the Tribunal is conducting where the audience may have an interest in a presentation from their respective agency.

Environmental Compensation Corporation

The Environmental Compensation Corporation ("ECC") provides compensation under the authority of the *Environmental Protection Act* to persons who suffer loss or damage as a direct result of an environmental spill. Generally, it is a payer of last resort, as applicants are required to make all reasonable efforts to obtain compensation from the persons responsible for the spill. In June 1997, the *Environmental Approvals Improvement Act*, 1997, S.O. 1997, c. 7, was enacted. It provides that no application for the payment of compensation, received after June 3, 1996, for loss or damage directly resulting from a spill shall be processed or paid by the ECC. Only a few outstanding applications remain. However, these applications cannot be considered until the related civil actions have been completed. The ECC no longer has staff and at the

request of the Ministry of the Environment, the Tribunal's counsel monitors the outstanding applications and assists in their eventual resolution.

Resource Sharing in the Agency Sector

Knox M. Henry, Vice-Chair, is cross-appointed as a part-time member of the Ontario Rental Housing Tribunal ("ORHT"). The Tribunal agreed to share up to five days per month of the Vice-Chair's time to allow him to sit on hearings of the ORHT. This initiative is part of the Tribunal's overall commitment to sharing resources within Ontario's Agency sector.

The Tribunal's offices are located within the same office tower as the offices of the Ontario Energy Board ("OEB"). As a result of an agreement between the Chairs of both Tribunals, the Tribunal receives its Internet and e-mail access through the OEB's connection.

Space adjacent to the Tribunal's offices is occupied by the Ontario Pesticides Advisory Committee ("OPAC"). The Tribunal currently shares resources with OPAC that include: the provision of a Local Area Network and systems support; a common entrance and backup reception; and other administrative functions.

Participation in the Work of Agency Reform

The function of the Agency Sector Coordinating Unit of Management Board Secretariat is to report on ways Ontario's regulatory and adjudicative agencies can improve the services they offer to the public.

The Tribunal is committed to collaborating with other agencies to share ideas and experiences, and to develop and improve agency policies, procedures and management. Members and staff have participated widely in other Agency sector initiatives. The Tribunal also contributes significant staff and member time to various agency reform committees. Carl Dombek, Chair, is a member of the Agency Sector Council, which was created to oversee various ongoing working groups. Some of these include: Quality Service, Efficient Management, and Appointments. Mark Frawley, Special Counsel, was a member of the Working Group on Efficient Management. Marlene Mills, Hearing Assistant, is a member of the Editorial Board for Agency Network Solutions ("AGNES"), the Ontario Agency Sector website.

Participation in Other Organizations

Susan Dunn, the Tribunal Secretary, was an elected member of the Society of Ontario Adjudicators and Regulators' ("SOAR") Board of Governors for two terms from 1996 to 2000. She was also on the SOAR Executive as the treasurer from 1998 to 2000. Ms Dunn is responsible for the implementation and maintenance of SOAR's computerized membership list.

Carl Dombek, Chair, has been an elected member of the Canadian Council of Administrative Tribunals' Board of Directors since 1998.

Mark Frawley, Special Counsel, was a member of the Shared Services Bureau's Customer Council, and of Management Board of Cabinet's Information and Information Technology Standards Council.

Law Co-op Program

The Tribunal participated, for the first time, in the University of Victoria's Law Co-op Program. Melanie MacNaught, a first-year law student, worked at the Tribunal from May to August 2000. She assisted the Chair, members and counsel with various law-related assignments.

Tribunal Activities

Case Type	No. of Unresolved Cases Carried Forward into 00-01 Fiscal Year	No. of New Cases Received in 00-01 Fiscal Year	No. of Cases Resolved in 00-01 Fiscal Year by Decision of the Tribunal	No. of Cases Resolved in 00-01 Fiscal Year by Tribunal Approved Settlements	No. of Cases Closed in 00-01 Fiscal Year by Other Means*	No. of Cases Carried Forward into 01-02 Fiscal Year	No. of Hearing Days Held in 00-01 Fiscal Year	No. of Tribunal Days Held on Other Matters in 00-01 Fiscal Year**	No. of Tribunal Days Held on ADR in 00-01 Fiscal Year
ENVIRONMENTAL ASSESSMENT ACT									
Applications by Referral	0	0	0	0	0	0	0	0	0
ENVIRONMENTAL PROTECTION ACT									
Applications by Referral	0	2	2	0	0	0	4	2	0
Appeals	21	41	14	5	28	15	24	26	5
ONTARIO WATER RESOURCES ACT									
Applications by Referral	0	0	0	0	0	0	0	0	0
Appeals	4	36	3	1	20	16	13	12	2
PESTICIDES ACT									
Appeals	0	1	0	0	1	0	1	0	0

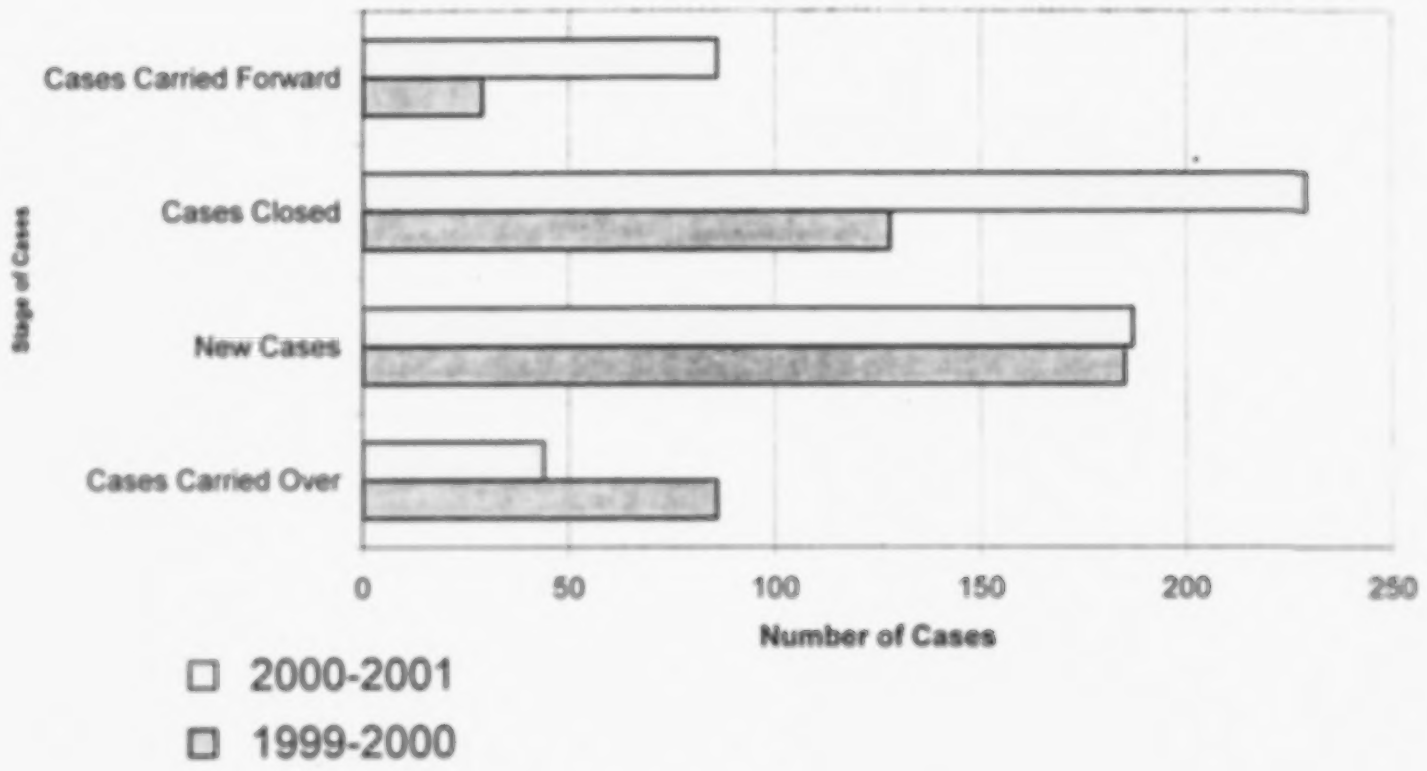
Case Type	No. of Unresolved Cases Carried Forward into 00-01 Fiscal Year	No. of New Cases Received in 00-01 Fiscal Year	No. of Cases Resolved in 00-01 Fiscal Year by Decision of the Tribunal	No. of Cases Resolved in 00-01 Fiscal Year by Tribunal Approved Settlements	No. of Cases Closed in 00-01 Fiscal Year by Other Means*	No. of Cases Carried Forward into 01-02 Fiscal Year	No. of Hearing Days Held in 00-01 Fiscal Year	No. of Tribunal Days Held on Other Matters in 00-01 Fiscal Year**	No. of Tribunal Days Held on ADR in 00-01 Fiscal Year
NIAGARA ESCARPMENT PLANNING AND DEVELOPMENT ACT									
Development Permit Appeals	55	74	31	0	90	8	27	12	26
Plan Amendment Applications	2	4	3	0	1	2	3	0	0
CONSOLIDATED HEARINGS ACT									
Applications	3	5	4	0	1	3	23	5	0
ENVIRONMENTAL BILL OF RIGHTS, 1993***									
Leave to Appeal Applications	1	24	15	0	10	0	0	0	1
Total	86	187	72	6	151	44	95	57	34

* Resolved by other means include: withdrawal by applicant/appellant; case abandoned; settlement reached after mediation, etc.

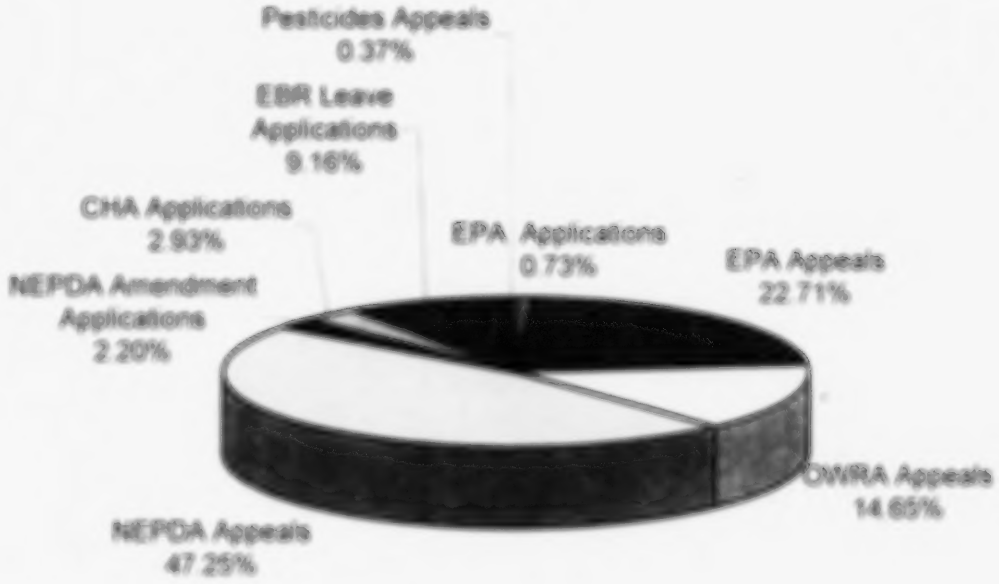
** Other matters may include: Tribunal days held for the hearing of motions; stay applications; pre-hearing conferences, etc.

*** It is the Tribunal's practice to hold written hearings in these matters.

Total Resolved Cases - 1999-2000 vs. 2000-2001



Total Cases in 2000-2001 by Case Type



Note: There were no applications referred under the *Ontario Water Resources Act* and the *Environmental Assessment Act*.

Summaries of Selected Decisions *

Consolidated Hearings Act

Lyle and Muriel Steele

This case involved an application heard by a Joint Board under the *Consolidated Hearings Act* ("*CHA*").

The Steeles wanted to sever a one-acre lot for residential use and retain an additional parcel for continued residential use. The lands were located within the Niagara Escarpment Plan ("NEP") area and a development permit from the Niagara Escarpment Commission ("NEC") was required before construction could occur on the severed lot.

The NEC refused to grant the development permit and the Steeles appealed that decision. The NEC also appealed a decision by the Committee of Adjustment for the Town of Niagara which granted the Steeles a severance. The Steeles' agent then requested a consolidation of these hearings before a Joint Board under the *CHA*.

Issue: Did the proposed lot fall within the new lots density limit for lands designated as Escarpment Protection Area in Part 1.4 of the NEP, in order to allow the desired severance and development permit?

Decision: No. The Joint Board found that the Steeles' application did not fall within any of the criteria set out in the new lots policy of the NEP that would allow the severance.

The Joint Board noted that "on the matter of the relationship between the NEP and regional local plans, it is clear that priority is given to the NEP via s. 14 of the *Niagara Escarpment Planning and Development Act* ("*NEPDA*") which states that 'where there is a conflict between any provision of the Plan and any provision of a local plan ... then the provision of the NEP prevails'."

As such, the panel found that based on the evidence, the proposed dwelling and land severance did not conform with the new lots policy of the Escarpment Protection Area of the NEP. The panel noted that the purpose of the NEP and objectives of the Escarpment Protection Area, such as the maintenance and enhancement of the Escarpment landscape, the provision of a buffer to prominent Escarpment features and the maintenance of natural areas of regional significance, clearly applied to this matter.

Released: December 7, 2000 (Case No.: (01)-0001)

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* The Environmental Appeal Board and the Environmental Assessment Board were formally amalgamated on December 6, 2000, to form a single adjudicative body, the Environmental Review Tribunal, with the passage of the *Environmental Review Tribunal Act, 2000*. Summaries of decisions issued by the Boards prior to December 6, 2000 will refer to "the Board", while those referring to decisions issued by the Environmental Review Tribunal after that date refer to "the Tribunal". The titles "Joint Board" under the *Consolidated Hearings Act* and "Hearing Officer" under the *Niagara Escarpment Planning and Development Act* were not affected by the legislative change.

Central Milton Holdings Ltd. and 829497 Ontario Ltd., and 829927 Ontario Inc.

Central Milton Holdings Ltd. and 829497 Ontario Ltd. ("CMH") applied for an amendment to the NEP and to the Region of Halton Official Plan ("RHOP") in order to designate their property as an Urban Area under the NEP. The 63 hectares in question are located near the corner of Steeles Avenue and Tremaine Road, in the Town of Milton. Similarly, 829927 Ontario Inc. ("Cucumis") applied to have its 40 hectares of land near Steeles and Tremaine designated as Urban Area by the NEP and the RHOP. A Joint Board, consisting of members of the Ontario Municipal Board and the Environmental Assessment Board, was appointed to hear the applications.

Both applications requested that the properties be excluded from the NEP, or, in the alternate, be re-designated as Escarpment Urban. The NEC opposed amending the NEP. The RHOP would also have to be amended, since it mirrors the NEP's designations. The CMH property is designated as Escarpment Rural, whereas the Cucumis land is Escarpment Protection. Each of these designations has its own objectives, but development is more restricted on Escarpment Protection land.

One of the NEP objectives considered was preserving the open landscape and views of Escarpment Rural and Protection Areas. The Cucumis property is currently used for agriculture. Its eastern boundary abuts the CMH property, which is vacant and contains an old quarry. A woodlot extends over part of both properties. All parties presented evidence on how the proposed development would affect the landscape. The Town of Milton supported designating both lands as Urban in order to enhance development. The Region of Halton supported changing the designation of the CMH land to Urban, but did not support designating Cucumis's property as Urban. Several conservation groups and a number of concerned citizens spoke against the proposal.

Issues: The following are some of the issues considered by the Joint Board:

1. Should the application of Cucumis be dismissed as *res judicata* or an abuse of process because of its previous application for an NEP amendment? A hearing had been held in 1987 and the amendment had been refused.
2. Are the proposed amendments compatible with the purposes and objectives of the *NEPDA* and the NEP?
3. Do the proposed changes of designation or deletions within the NEP represent sound environmental and land use planning, and are they in the public interest?
4. Can the proposals be justified under the RHOP, the *Planning Act*, the Provincial Policy Statement, the Town of Milton Official Plan and related planning reports?

Decision: The Joint Board found that Cucumis's application was not *res judicata* (i.e. that the issue was already decided) or an abuse of process because there had been sufficient changes, including increased sewer/water capacity and the support of previously-opposed agencies, to justify holding a new hearing. Furthermore, the 1987 application did not include the possibility of re-designating the land as Urban under the NEP.

The Joint Board found that neither property should be excluded from the NEP. The evidence showed that the natural features of the properties enhance the open landscape of the Escarpment.

The Joint Board found the evidence of the Region of Halton to be the most credible. An analysis completed by Halton in 1996 indicated the Cavanna property was close enough to the Escarpment that it ought to remain designated as Escarpment Protection Area. That study also recommended further review of the CNR land. That further study was never completed, leading to these applications and the Joint Board hearing.

The Cavanna application was refused because the Joint Board found that changing the designation from Escarpment Protection to Urban would compromise the open landscape and views of the Escarpment.

As long as the property's woodlot was excluded, the Joint Board found designating CNR land as Urban would not be contrary to the public interest or the relevant legislation. However, the Joint Board considered that an ordinary subdivision would not meet the objectives of the *NEPDA* or the NEP. Therefore, the Joint Board required that CNR prepare a development plan addressing its concerns at a hearing to be held before the Joint Board within twelve months.

Reference: August 10, 2000 (Case Nos.: 99-036, 99-065)

Environmental Bill of Rights, 1993

Gillies et al. v. Director, Ministry of the Environment

This decision dealt with eight applications under the *Environmental Bill of Rights, 1993* ("*EBR*") seeking leave to appeal a Permit To Take Water ("PTTW") issued to OMYA (Canada) Inc. ("OMYA").

The PTTW was issued to OMYA by the Director, Ministry of the Environment ("MOE"), under s. 34 of the *Ontario Water Resources Act* ("*OWRA*") for the taking of water from the Tay River in Eastern Ontario for a period of approximately 10 years for use in the production of calcium carbonate in wet form (calcite slurry). Slurry is used in a number of products including paint, pharmaceuticals, plastics, building and paper products.

The PTTW included requirements for OMYA to install a continuous recording stream flow gauge station in the Tay River, and to withhold permission to withdraw an excess of 180 cubic metres per day after January, 2006, until the submission of a report on the aquatic environment of the Tay River.

The Applicants included persons with residences on or near the Tay River and its adjacent watershed, the Rideau River Watershed. As well, the Council of Canadians, a non-governmental organization, declared an interest in the case based on its history of advocacy and research on the impact of bi-lateral and multi-lateral trade agreements on the environment, management and

protection of water. The main common concern of the Applicants was whether the Director's decision to issue the EPCN was based on sufficient data on the Top Watershed.

Issues: Did the Applicants meet the two-part test for leave to appeal under the CEBR? That is, was there good reason to believe that an reasonable person, having regard to the relevant law and government policies, could have made the decision? Secondly, could the decision result in significant harm to the environment?

Decision: Yes. Under the first part of the test, the Board found that it was unreasonable for the Director to issue the EPCN when the five relevant issues (low concentration was unavailable until January 2006, and reliable low-flow was not be available before even later). The Board noted that the absence of this information creates a degree of uncertainty about impacts on the aquatic habitat of the Top River, which raises the possibility of significant harm to the environment. The Board thus concluded that the Applicants met both the reasonableness and environmental harm criteria of the CEBR test for leave to appeal, and granted leave to appeal.

Reasons: November 6, 2006 (Case Nos. 06-066, 06-069, 06-070, 06-071, 06-072, 06-073, 06-074, 06-075)

Concerned Citizens of Saddlewood Inc. v. Director, Ministry of the Environment

The Concerned Citizens of Saddlewood ("the Applicants") applied for leave to appeal the decision of the Director, MOE, under the provisions of the CEBR. The decision is granted was to issue Permit To Take Water No. 06-P-003 ("the PTTW"), allowing 130013 Ontario Inc. to extract water for commercial bottling from a well in the Township of Saddlewood.

The application for leave concerned itself with the proposed terms of the PTTW, under how the PTTW as it was issued. The proposed had been for two wells to take 160 litres per minute for 10 years. The decision to issue the PTTW allowed one well to take up to 160 litres per minute for one year. Confusion arose because the decision posted on the Environmental Registry indicated simply "permit issued" without explaining that the permit differed from the original proposal. The Board noted that the Registry posting "could be misleading".

The Applicants were concerned about the effects of taking the proposed volume of water from the environmentally sensitive Oak Ridges Moraine aquifer and surrounding wetlands. Their position was not opposed by notice or law.

The Director and the company both gave evidence that the decision on the PTTW was modified from the initial proposal in order to ensure continuing water supply. Furthermore, they presented evidence that the well was not taking water from the Oak Ridges Moraine aquifer or affecting the wetlands at surface water rights.

Issues: Did the Applicants meet the two-part test for leave to appeal under the CEBR?

Decision: No. Considering the actual PTTW issued rather than the originally-requested proposal, the test was not met. The Board accepted the Director's evidence that the well was not located in the Oak Ridges Moraine Aquifer, and that it would not affect the surrounding wetlands or property owner's rights to surface water.

Reference: April 10, 2000 (Case No.: 99-125)

Oates and Tucker Creek Limited v. Director, Ministry of the Environment

This was an application for leave to appeal under the *Environmental Bill of Rights, 1993* ("*EBR*") by William Oates and Tucker Creek Limited ("TCL"), a company that wants to construct and develop an Adult Retirement Community on its land.

TCL's land adjoined property owned by Imperial Oil ("Imperial"). Imperial owns a service centre on Highway 401, in Port Hope, Ontario. The service centre's sewage tile bed failed in March, 1998.

The Ministry of the Environment ("MOE") ordered Imperial to install a sewage treatment system and required Imperial to apply for a Certificate of Approval under s. 53 of the *OWRA*. The MOE issued the Certificate of Approval to Imperial.

William Oates and TCL applied for leave to appeal under the *EBR* regarding the Certificate of Approval issued to Imperial, citing concerns about the volume of effluent and effluent ponding on the TCL property.

Issue: Was the Certificate of Approval a Class II instrument under the *EBR*? This issue is important as only ministry decisions that are prescribed as Class I or Class II instruments under the *EBR* regulations may be appealed under the *EBR*. Class III instruments may not be appealed. Regulation 681/94 under the *EBR*, ss. 6(2)6 indicates that "A proposal for an approval under ss. 53(1) of the *OWRA* that would set limits for the discharge point" is a Class II proposal for instruments, while Regulation 681/94, ss. 6(2)9 states that "A proposal for an approval under ss. 53(1) of the *Ontario Water Resources Act*" is a Class III proposal for an instrument.

Decision: The Tribunal noted that while the regulation could be more clearly drafted in terms of distinguishing whether s. 53(1) *OWRA* approvals are Class II or Class III instruments under the *EBR*, the only distinction in this case appears to be that a Class II instrument "would set limits for the discharge of specific contaminants from a discharge point. All other proposals for certificates of approval under s. 53(1) of the *OWRA* are considered to be Class III instruments ..."

The Tribunal found the instrument in this case to be a Class III instrument under the *EBR* and thus could not be the subject of a leave to appeal application. The MOE Director's evidence that he specifically decided not to impose limits in the Certificate of Approval for the discharge of specific contaminants was found to be compelling by the Tribunal. The Tribunal also noted that the MOE had failed in its legal obligation to post this Class III instrument on the Environmental Registry for public notice and comment, as required by s. 22 of the *EBR*, and noted that the

Ministry should be more cognizant of when it needs to comply with the notice and comment on provisions of the Act.

Released: January 19, 2001 (Case No.: 00-135)

Environmental Protection Act

Medical Waste Management Inc.

In May 2000, Medical Waste Management Inc. submitted applications to the MOE under the *Environmental Protection Act* ("*EPA*") to amend its air and waste provisional Certificate of Approval for its biomedical and pharmaceutical waste transfer and processing site in the City of Brampton. In addition to increasing waste storage and autoclave sterilization capacity at its facility, it sought approval to install an incinerator to incinerate a maximum of 10 tonnes per day of biomedical, pharmaceutical and solid non-hazardous waste.

Under s. 30(1) of the *EPA*, the Director referred the applications to the Environmental Assessment Board. The Tribunal held a public hearing on the applications, in accordance with s. 33 of the *EPA*.

In preparation for the applications being submitted to the MOE, Medical Waste Management Inc. advertised in the local newspaper notice of public meetings and an open house at the facility. An invitation to meet was extended to neighbours within a kilometre of the site. The company met with City and Regional officials and satisfied their concerns about the proposal. The MOE reviewed the applications extensively and did not oppose them at the hearing.

Issue: Should the Tribunal approve the applications by Medical Waste Management Inc. to amend its Certificates of Approval to allow additional waste storage and installation of an incinerator for biomedical waste?

Decision: The Tribunal approved the applications to amend the Certificate of Approval subject to numerous terms and conditions in those instruments. While the Tribunal found that most of the relevant MOE air quality guidelines were met, and that detailed human health risk assessment had been conducted, it noted that the emission of nitrogen oxide, a component of smog, was not in compliance with the MOE's guideline. The Ministry witnesses testified that while this was true, they were not concerned as compliance with the A-7 Guideline was intended for large municipal waste incinerators. The Tribunal expressed concern over this matter and directed the MOE to monitor this issue carefully in the future in order to work towards compliance with the Guideline. The Tribunal commended the Applicant for the way in which it initiated dialogue with the surrounding community and neighbours, and noted that its public consultation efforts appeared to have been beneficial and effective, as no opposition was raised to the applications.

Released: February 13, 2001 (Case No.: 00-101)

ABC Group Exterior Systems Inc. v. Director, Ministry of the Environment

The Director of the Ministry of the Environment issued a field order under s. 14 of the *EPA* to ABC Group Exterior Systems Inc. ("ABC Group") after a complaint was made about noise from exhaust systems from its manufacturing operations in Etobicoke (now part of the City of Toronto). ABC Group appealed the order.

Issue: Did the Director have jurisdiction to issue an order dealing with sound and vibrations, although an Etobicoke by-law also dealt with such issues?

Decision: The Board's interim decision on the jurisdictional issue stated that the Director did have jurisdiction to issue an order under s. 14 of the *EPA*. The Board found that there was no conflict between the by-law and the *EPA*, and noted that the laws can exist concurrently. The by-law in question did not apply to industrial noise of the type at issue in this case. Instead, the by-law limited noise within agricultural, rural and quiet zones. The Board interpreted the *EPA* purposively and found that the legislators could not have intended to prohibit the Director from exercising his or her powers under the *EPA*, leaving noisy industrial areas unregulated and complaints unaddressed.

During the hearing, counsel for the parties jointly presented an amended order. The Board agreed to the terms of the amended order and adopted it as a component of its decision in this matter.

Released: August 17, 2000 (Case No.: 00-013); **Amended Order released:** October 25, 2000

The Township of Frontenac v. Director, Ministry of the Environment

On January 4, 2001, the Environmental Review Tribunal received a purported Notice of Appeal from the Township of Frontenac Islands, concerning an amendment to its Provisional Certificate of Approval issued by the Director, Ministry of the Environment under the *EPA*.

The amendment was dated November 29, 2000. Written inquiries were made by the Tribunal Secretary requesting an affidavit indicating the actual date the Township received the Order. On January 15, 2001, the agent for the Township filed an affidavit stating that he received the Amendment to the Provisional Certificate of Approval on December 19, 2000.

Issue: Was the appeal of the Provisional Certificate of Approval filed in time?

Decision: No. Based on the established date of service, the Tribunal found that the appeal was filed outside the 15-day filing period provided under s. 139 of the *EPA*. Since the *EPA* does not provide the Tribunal with any discretion to extend the filing period, the Tribunal held that the purported Notice of Appeal was not within its jurisdiction to consider.

Released: January 22, 2001 (Case No.: 00-151)

Niagara Escarpment Planning and Development Act

Hickory Farms Ratepayers Association et al. v. Niagara Escarpment Commission

Under the *Niagara Escarpment Planning and Development Act,* ("*NEPDA*"), the Hickory Farms Ratepayers Association and neighbouring landowners ("the Appellants") appealed the decision of the Niagara Escarpment Commission ("NEC") to approve the Development Permit applied for by Kent and Lois McClure. The Permit was to allow the construction of 19 houses with connecting roads and a sewer system in the Town of Halton Hills.

This issue has been unresolved for 12 years following the conditional approval by the Ontario Municipal Board ("OMB") of the draft plan for a 20 lot rural residential development to be known as Beechbrooke Estates. In 1994, the NEC refused to issue the McClures a Development Permit until the OMB's conditions were met. When the McClures reapplied in 1999, the NEC approved the Development Permit.

The Appellants based their appeals largely on arguments that OMB conditions safeguarding groundwater quality and quantity were not being met, and on concerns about altering the landscape.

During the course of the hearing, parties were encouraged to discuss possible solutions. Mr. McClure agreed to a special clause regarding the construction of a septic system on a lot that was of particular concern to one of the Appellants. Conditions were also clarified regarding tree planting, landscaping and a letter of credit covering the cost of a possible water shortage. These agreements were consented to by all parties.

Issue: Were the voluntary agreements between the parties sufficient to address the grounds of appeal?

Decision: Yes. The concerns of the Appellants were sufficiently dealt with, except perhaps the concerns of one neighbour who chose not to give evidence. The agreements reached on how the conditions of approval would be satisfied were included in the Hearing Officer's report to the parties and to the Minister of Natural Resources. By operation of law, the NEC's approval of the Development Permit was confirmed.

Released: May 25, 2000 (Case Nos.: 99-115, 99-179, 99-180, 99-181, 99-182)

Hynes v. Niagara Escarpment Commission

Under the *NEPDA,* Mr. Hynes appealed a decision of the NEC to approve two development permits issued to his neighbours. The first development permit allowed for construction of a dwelling and installation of a private sewage system; the second permit recognized a shed for which no permit was issued and improved and extended an existing driveway.

Mr. Hynes had unsuccessfully appealed a similar decision issued by the NEC in 1989, pertaining to the same property but owned by previous owners, which permitted construction of a single-family dwelling, a driveway and a sewage system. The Hearing Officer noted that on first reading, Mr. Hynes' grounds of appeal appeared very similar to the unsuccessful arguments from his previous appeal.

Issue: Should the Hearing Officer refuse to conduct a hearing in this matter, based on the new provisions in the *NEPDA*, which allow for such a refusal where the Hearing Officer is of the opinion that the appeal is frivolous or vexatious, and which further authorize a Tribunal to make such orders as it sees fit to protect against abuse of its process?

Decision: Yes. After considering the parties' submissions and the documentation filed in this matter, the Hearing Officer dismissed the appeal, after finding it frivolous and vexatious within the meaning of s. 25 (8.1) of the *NEPDA*. The Hearing Officer found that Mr. Hynes had not presented new planning justifications for the appeal, and that there was no significant change in the law or the facts.

The Hearing Officer also made the decision based on s. 25 (10.1) of the *NEPDA*, which incorporates s. 23 (1) of the *Statutory Powers Procedure Act* into the development permit process under the *NEPDA*, and authorizes a Tribunal to make orders as it sees fit to protect against abuse of its process. The Hearing Officer found that the grounds for the current appeal were either argued unsuccessfully at the previous hearing or could have been, and noted that allowing Mr. Hynes the opportunity to re-litigate the same concerns would be a waste of public resources.

Released: July 11, 2000 (Case No.: 00-024)

Ontario Water Resources Act

Regional Municipality of Durham v. Director, Ministry of the Environment

The Ministry of the Environment ("MOE") issued a report under s. 62 of the *Ontario Water Resources Act* ("*OWRA*") requiring the Regional Municipality of Durham ("the Region") to establish, maintain and operate the existing private water system owned by Sun Valley Heights Homebuilder's Co-operative Limited ("the Co-op").

Forty years ago, the Co-op established a communal well servicing 17 homes in a subdivision in Whitby, Ontario. In May and June of 2000, the Health Department of the Region tested the communal well and results showed the presence of total coliform bacteria. A Boil Water Advisory was issued to residents, and the MOE was informed of the problem. In July, 2000, the MOE issued a field order under the *OWRA* to the Co-op residents, directing them to repair and operate the waterworks with a disinfection treatment process, with certain requirements for retaining an engineering consultant, reporting to the MOE, installing the equipment, etc.

The Co-op residents wrote to the MOE immediately and indicated their belief that it was beyond their technical and financial capability to handle the situation, and that it would be in the public interest for the municipality to take over responsibility for the waterworks. In August 2000, the Director issued an order under s. 62 of the *OWRA* to the Region, ordering it to establish, maintain, replace and operate the existing private water system owned by the Co-op.

Issues:

1. Was there a health and safety risk to the residents?
2. Did the circumstances warrant an order being issued under s. 62 of the *OWRA*?
3. Was it in the public interest to issue this order?

Decision:

1. Yes. The Tribunal noted that in the spring and early summer of 2000 there had been incidents of water contamination in other locations in Ontario with drastic results of illness and mortality. The Tribunal accepted the evidence of the MOE that the total coliform count at the site was above the level allowed in the *Ontario Drinking Water Objectives*.

2. Yes. The Tribunal agreed with the MOE's evaluation that the residents of the Co-op were not capable of operating the water system, and that the Region had the expertise and access to resources needed to correct the situation.

The Tribunal also noted that determining the appropriate option for the system in terms of cost should be left to the Region to determine in consultation with the residents of the Co-op.

3. Yes. Given the importance of clean drinking water, the order served the public interest by assuring the availability of potable water.

Released: January 15, 2001 (Case No.: 00-059)

Report on Performance Measures
Fiscal Year 2000-2001

In fiscal year 2000-2001, the Tribunal adopted nine common goals as critical to effective and efficient performance and service quality in its core businesses of Outreach, Alternative Dispute Resolution, Staff Processing of Hearings and Hearings and Decision Making.

In this fiscal year, the Tribunal met or exceeded the performance measures in each of the nine targeted areas. See Appendix F, a chart entitled Key Performance Goals and Objectives next fiscal year 2001-2002.

Accessibility, Quality and Consistency in Outreach:

In the area of Accessibility, Quality and Consistency in Outreach, the Tribunal used a number of measures to monitor performance.

Brochures and flyers were screened for the use of plain language and will be reprinted to reflect an improved brochure as well as the Tribunal's new name.

The Tribunal has prepared a visual presentation for Public Information Sessions held in communities prior to the commencement of a complex hearing. These sessions allow the public to be fully informed of the hearing process and advise how they can participate in the hearing. During this period, the Tribunal conducted one Public Information Session prior to the commencement of a hearing. The Tribunal undertook to evaluate Public Information Sessions by surveying audience participants on the content and the presentation. As only one session was held, any results obtained from the surveys would not provide a sufficient assessment of the content and presentation; however, the results were positive.

The Tribunal's website has a feedback form available for visitors' use. The Tribunal has responded to feedback received through these forms. For example, as a result of comments made during the past fiscal year, the Tribunal re-organized its website to make it easier for users to find information regarding a type of hearing, i.e. a hearing held by the Environmental Review Tribunal, the Office of Consolidated Hearings or the Niagara Escarpment Hearing Office.

Tribunal decisions are posted on the website within 24 hours of their release and are available in full-text downloadable format. If members of the public do not have Internet access, the Tribunal will mail, upon request, copies of decisions free-of-charge.

Standards for response times to inquiries were established for staff. In most instances, staff respond to telephone inquiries within 24 hours of receipt, return e-mails within 24 hours, and to regular correspondence within five days. This is in contrast to the government's 15-day standard response time to e-mail and regular correspondence.

Staff was provided with standardized information developed to ensure high quality and consistent "messages" when communicating to the public by telephone, particularly when responding to frequently asked questions.

Website logs were maintained to measure the number of visits to various pages on the Tribunal's website and to determine the frequency of downloads of the Tribunal's Rules of Practice and enabling statutes. When receiving requests for hard copies of these documents, staff first advise the requester that this information is available in downloadable format on the website. Since the website's launch in 1998, the number of downloads of these documents from the website (in the tens of thousands) far exceed the number of paper copies distributed (less than a few hundred per year). This technological initiative results in a significant annual reduction of the number of requests for paper copies, and a significant reduction of staff time and processing costs.

Fairness and Optimal Cost in Alternative Dispute Resolution:

In order to assess fairness in conducting Alternative Dispute Resolution ("ADR") sessions at an optimal cost, the Tribunal examined a number of factors.

ADR services are available to all parties to matters which are heard by the Tribunal. The Tribunal formally offers these services in every appeal and, upon request, in all applications in order to encourage parties to resolve their issues. In this fiscal year, parties participated in ADR sessions during the hearing process in 55 cases compared to 26 cases in the previous fiscal year.

Senior staff and Tribunal members who conducted ADR sessions were screened for potential allegations of bias or conflict of interest in each particular case. The Tribunal did not receive any complaints concerning bias or conflict of interest. Senior staff and Tribunal members who conducted the ADR sessions were certified through an accredited course.

All participants in each ADR session were sent a questionnaire at the end of the session, which included questions on their perception of fairness in the process by the staff member/Tribunal member who provided the ADR services. Of the responses received, the Tribunal scored 98% concerning the perception of fairness and 95% in overall satisfaction with the ADR process, which exceeded the quantified target of 70%.

Transparency and Time Lines in Staff Processing of Hearings:

In order to assess performance under this targeted area, a number of measurables were identified. Manuals that were produced for staff which detail step-by-step processes for each appeal/ application received by the Tribunal under the various statutes have been updated as policies and procedures are modified. The manuals clearly define what steps are to be taken, and their sequence. The manuals form the basis of the information transmitted to the members of the public who access the Tribunal's processes, in order to explain to them what steps their application will take throughout the entire process. The manuals are also used for the orientation of new employees.

The Tribunal adopted a 30-calendar day timeliness standard to issue a Notice of Hearing, starting on the day on which the application/appeal is received. The Tribunal met the timeframe as the average time to issue the Notice of Hearing from the date of receipt is 17 days. The average time staff took to schedule an application/appeal after the parties provided all necessary documentation was 7 calendar days (5 business days). This is the second consecutive year in which the staff have met these standards.

Courtesy, Time Lines and Optimal Cost in Hearing and Decision Making:

In order to assess the Courtesy, Time Lines and Optimal Cost target area in hearings and decision making, a number of measuring tools were developed.

Questionnaires were developed and given (along with a self-addressed stamped envelope) to every party, every representative of a party and every participant at a hearing during this fiscal year. These questionnaires continue to be used for a variety of purposes, in order to improve the hearing processes. The questionnaires included questions related explicitly to the perception of the parties and their representatives concerning the courtesy of Tribunal members during the hearing process. Of the 30 responses received, the Tribunal scored 100% relating to member courtesy. Another measurement used was the observations of Tribunal members and of senior staff in attendance at hearings, in order to continually improve the level of courtesy extended to members of the public during the hearing process. The Tribunal developed a formal policy and process for complaints received from the public. The Tribunal received one formal complaint this fiscal year about the conduct of a Hearing Officer at a hearing, which was investigated by the Chair in accordance with the Tribunal's Complaints Policy. Corrective action was taken and the complaint was withdrawn at the conclusion of the investigation.

For the second consecutive fiscal year, the Tribunal successfully met the 30-day average time frame to release its decisions/recommendations after the completion of the hearing. On average, the Tribunal released its decisions/recommendations within 20 calendar days.

Cost of Hearings:

The Tribunal tracked the cost of hearings and the cost of ADR sessions conducted by senior staff and Tribunal members.

It is the Tribunal's policy to conduct ADR sessions by teleconference except where the Tribunal and the parties consider it would be more beneficial to the resolution of the case if the ADR session were held in person.

The budget components of the ADR sessions were the cost of a senior staff member at a calculated per-diem rate, and any out-of-pocket expenses such as charges associated with the connection of the teleconference or travel expenses if the session was held in person.

The budget components of hearings were the costs of members, calculated at the actual per-diem rate paid to part-time members, or the calculated per-diem rate for full-time Vice-Chairs, plus

expenses such as travel, accommodation and meal charges and, if applicable, the rental cost of the hearing room, court reporters or interpreters.

Only hearings that were completed in fiscal year 2000-2001 and to which members devoted hearing time were factored into the calculation. Thus, hearings that either began in a previous fiscal year, (in which case, the time spent and the expenses incurred were obtained from the records of previous fiscal years) and ended in fiscal year 2000-2001, or hearings that both began and ended in fiscal year 2000-2001 were used for this calculation. Hearings which began in this fiscal year but which remained open on April 1, 2001 were not used in the calculation, but their cost results will be included in the fiscal year in which they were completed.

The average cost of a hearing completed in fiscal year 2000-2001 was $1,375.86 and the average cost per day was $363.79.

The average cost of an ADR session was $127.34.

Other Performance Targets:

The Tribunal set targets for areas outside of its Core Businesses. Tribunal Members and staff participated in the Government's Agency Reform mandate by becoming involved on committees and providing assistance or input as required. Members and staff also participated in the greater Agency community by actively participating in the Canadian Council of Administrative Tribunals and the Society of Ontario Adjudicators and Regulators.

Appendix A
Profile of Tribunal Members

Chair and Full-time Vice-Chairs

Carl F. Bombek, Chair

- Chair of the Environmental Review Tribunal since December 1997
- Graduate of Brock University and Dalhousie University Law School
- Practiced law in the private and public sectors
- Over 20 years' experience as a Legal Director for various Ministries and Agencies
- Former Chief Administrative Officer of a provincial Law Society and Director of Business Development Branch for a provincial Commission
- Significant experience in managing change, improving quality and client service, and in risk management

Pauline Brown

- Appointed as a Vice-Chair in October 1995
- Received Bachelor of Arts (Political Science) from York University, Toronto and holds an Elementary Teaching Certificate from Toronto Teachers' College
- Member of Federal Parliament from 1984 to 1993; Cabinet Minister and Privy Councillor (1991-1993); Minister of Indian Affairs and Northern Development (1993); Minister of State – Employment and Immigration (1993); Minister of State – Environment (1991-1993)
- Commissioner and Appeal Commissioner, Residential Tenancy Commission, Government of Ontario (1981-1984)
- Chair and Member of the Scarborough Board of Health (1981-1982)
- Committee member, Chiropractic Review Committee, Government of Ontario (1976-1981)
- Member of Board of Governors, Scarborough Hospital (1984-1989)
- Founder and Curator of an Art Gallery at Rice Lake, Ontario (1989)

Les Gertler

- Appointed as a Vice-Chair in May 1998
- Distinguished Professor Emeritus, University of Waterloo, and a Fellow of the Canadian Institute of Planners
- Combines an interest in planning, development, and environmental management in both an urban and regional context in Canada and abroad
- Co-ordinator and author of the Niagara Escarpment Study, commissioned by Premier John Roberts, which eventually led to the establishment of the *Niagara Escarpment Planning and Development Act* in 1973
- Foreign assignments include work in Southeast Asia and the Caribbean for United Nations agencies and Canadian International Development Agency
- Author and editor of several books on environmental and planning issues

Kaye M. Henry

- Originally appointed as a part-time Member to the Pesticides Appeal Board in 1975, which was merged with the Environmental Appeal Board in 1978
- Part-time member until appointed the full-time Vice-Chair of the Environmental Appeal Board in 1993
- Cross-appointed as member of the Ontario Rental Housing Tribunal in 1999
- Strong background as one of Canada's leading horticulturalists
- Guest lecturer on propagation, management and environmental issues at various universities and colleges
- Cross-appointed as a Deputy Mining and Lands Commissioner for the period 1995 to 1997

David Hutchison

- Appointed Vice-Chair in June 1999
- Deputy Mayor, Budget Chief, and executive member Toronto City Council (1994-1997); introduced Ontario's first municipal no-by-law and clean-air legislation
- Commissioner, Toronto Harbour Commission (1994-1997)
- Director, Runnymede Chronic Care Hospital (1994-1997)
- Director, Humber Watershed Alliance and Task Force (1992-present). Humber granted Heritage River status; Canadian Institute of Planners S. George Kelt 1998 award recipient
- Director and founding member of the Canadian Urban Institute, Toronto (1992-present)
- Vice-Chairman, City of Toronto Planning Advisory Committee (1985-1989)
- Bachelor of Arts, Henry Rutgers Scholar (Honors), Rutgers College, Rutgers University, New Jersey, presently part-time Master of Public Administration student at University of Western Ontario

Part-time Tribunal Members

William Ballinger

- Appointed in May 1999 and a resident of Markham, Ontario
- Principal of Gartner Lee Ltd., Environmental Consultants since 1989
- Civil engineer with a Master of Business Administration from the University of Toronto
- Formerly held senior positions in the Ministry of the Environment and the Ministry of Health
- Certificate in financial planning

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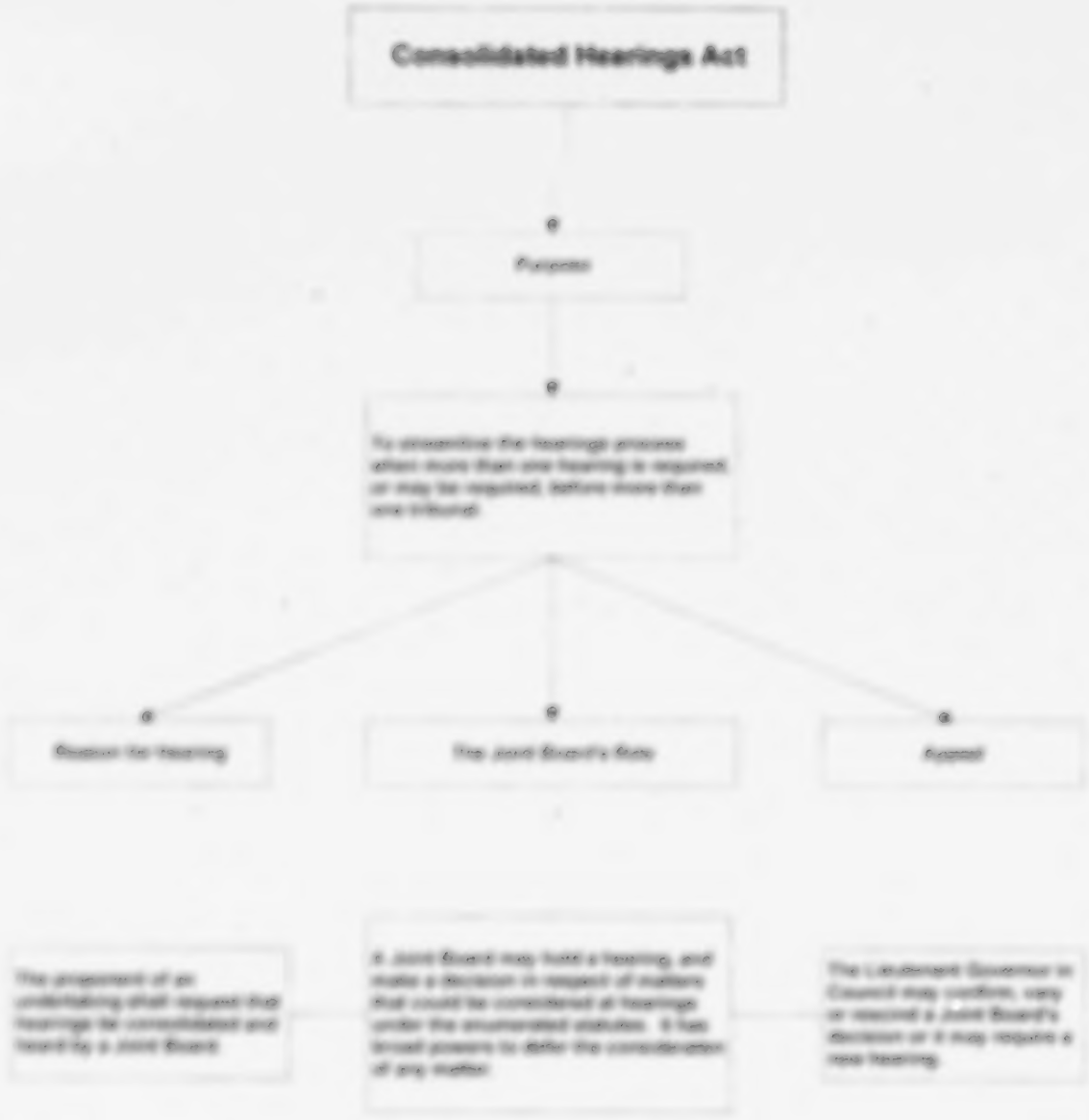
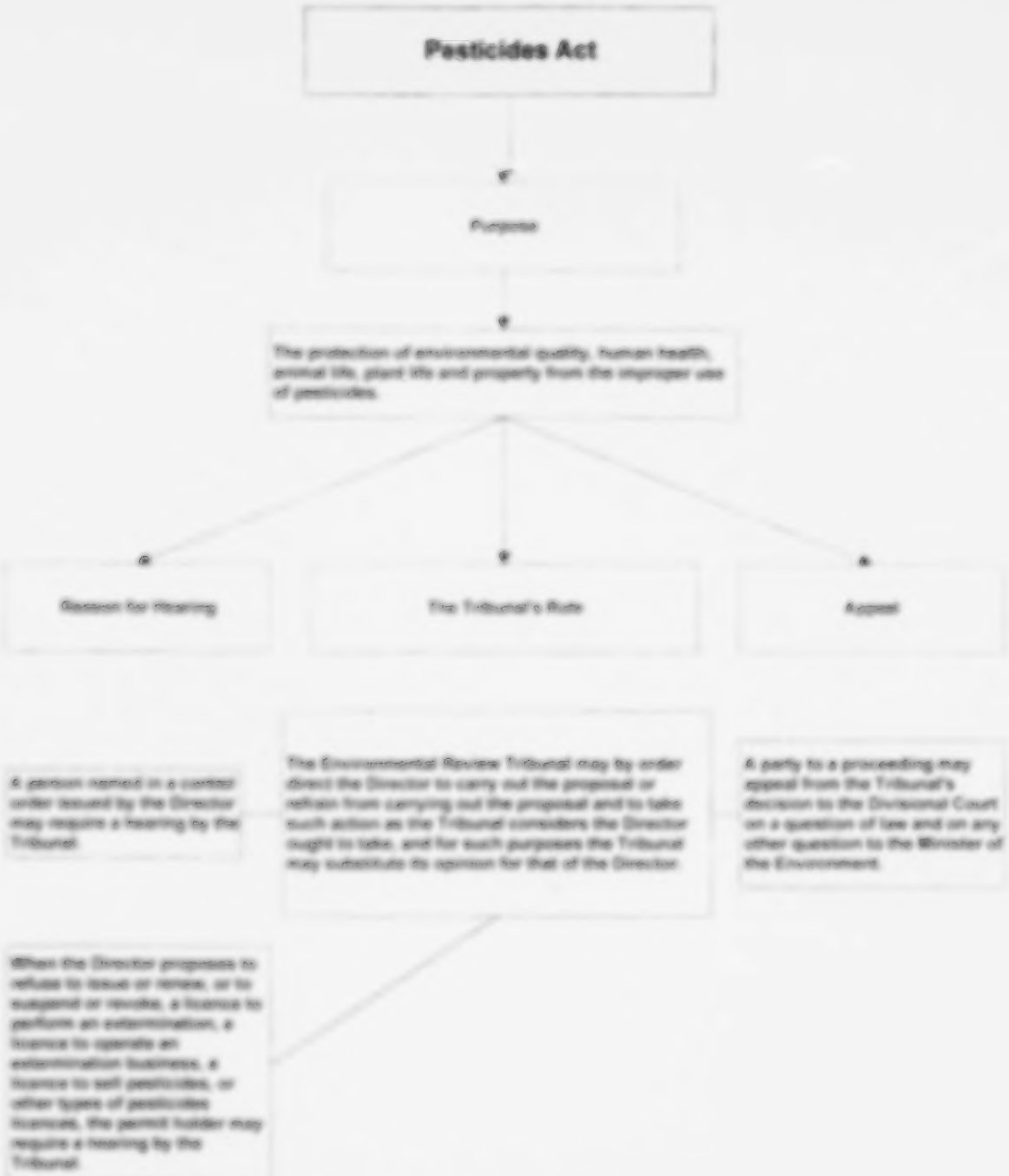
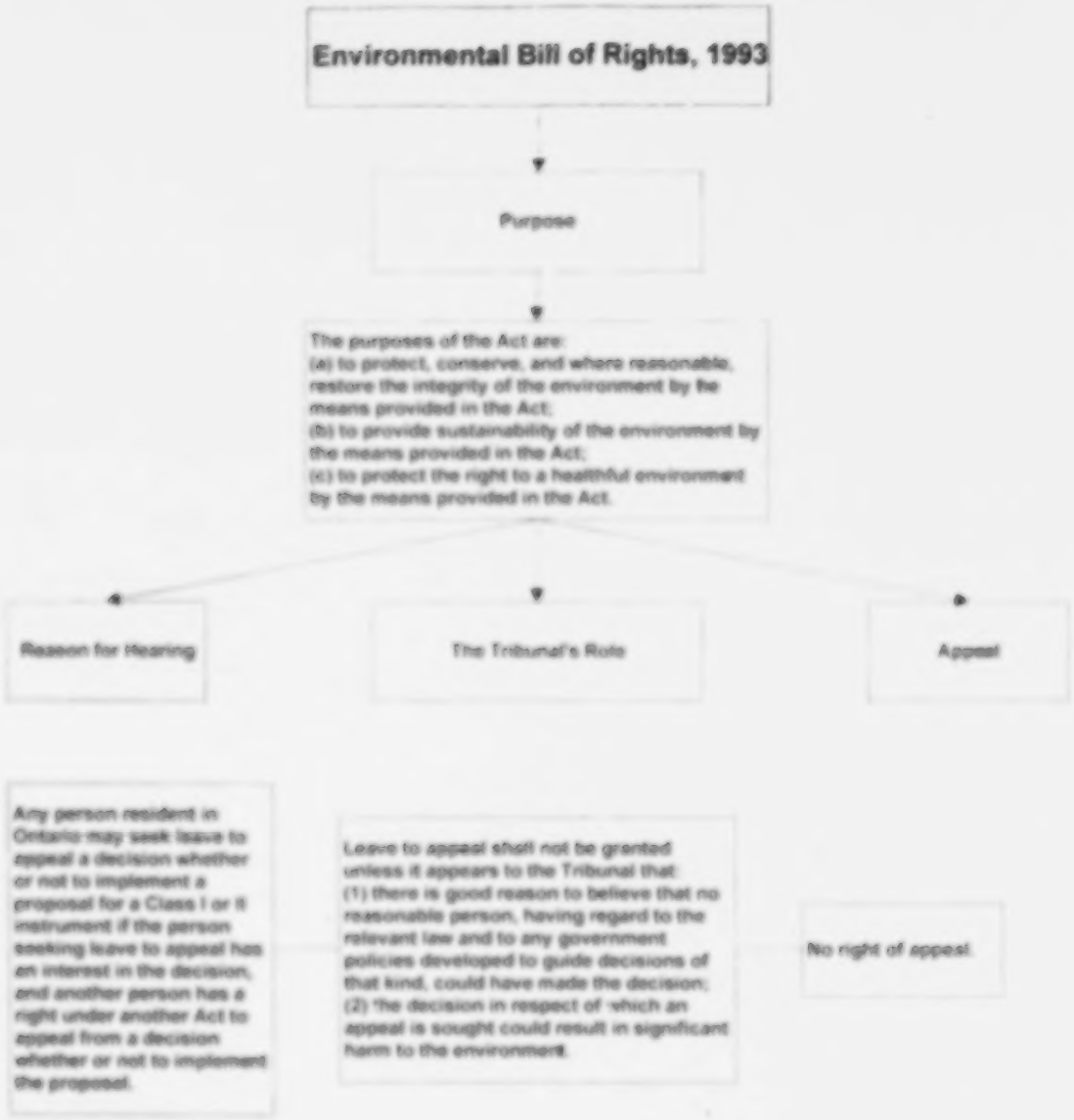
Note: [redacted]

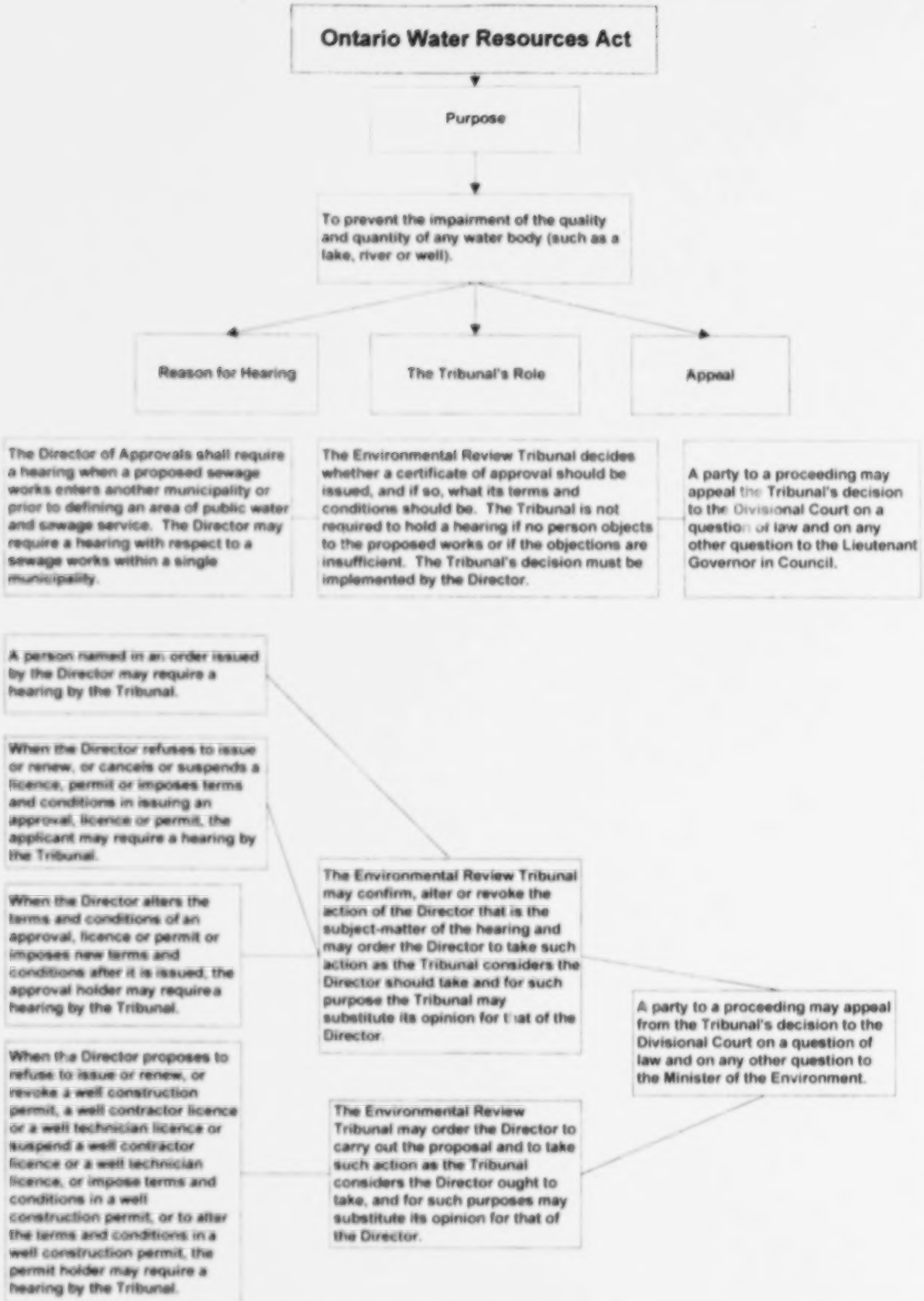
Appendix B

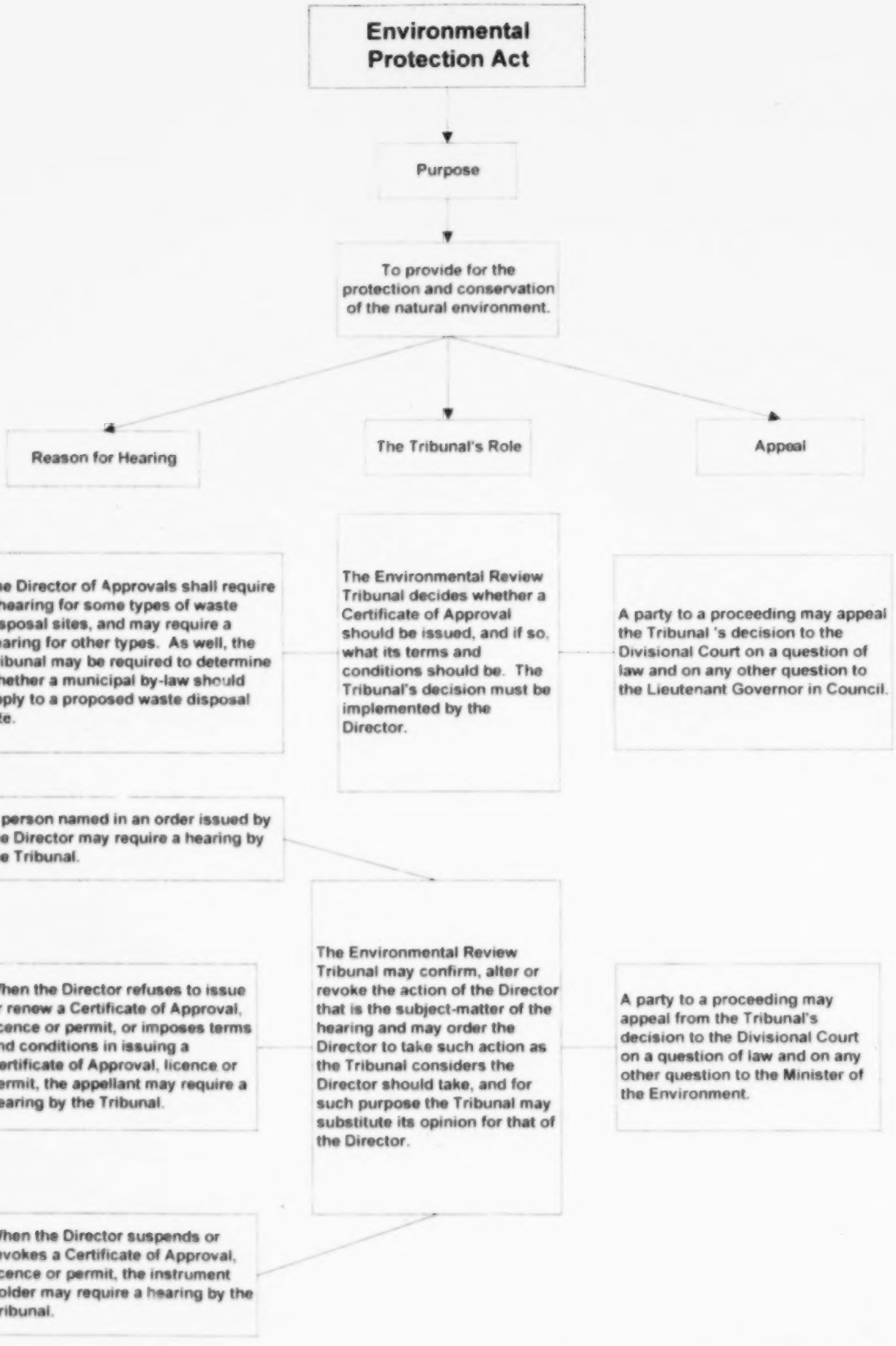
Overview of Relevant Legislation

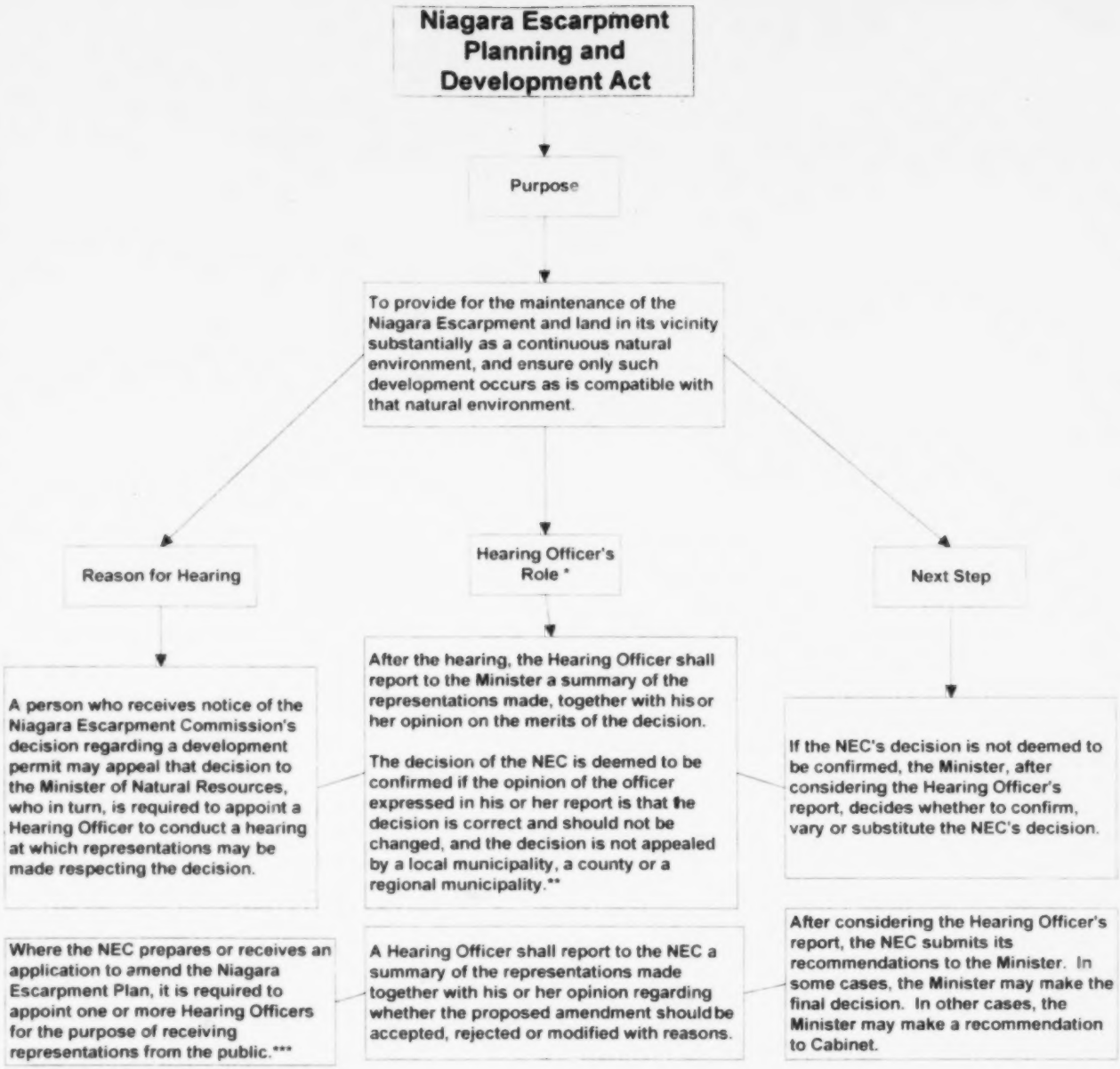

Consolidated Hearings Act
Purpose
To streamline the hearings process when more than one hearing is required or may be required, before more than one tribunal
Reason for Hearing
The Joint Board's Role
Appeal
The proponent of an undertaking shall request that hearings be consolidated and heard by a Joint Board
A Joint Board may hold a hearing, and make a decision in respect of matters that could be considered at hearings under the enumerated statutes. It has broad powers to defer the consideration of any matter
The Lieutenant Governor in Council may confirm, vary or rescind a Joint Board's decision or it may require a new hearing


Pesticides Act
Purpose
The protection of environmental quality, human health, animal life, plant life and property from the improper use of pesticides
Reason for Hearing
The Tribunal's Role
Appeal
A person named in a control order issued by the Director may require a hearing by the Tribunal.
The Environmental Review Tribunal may by order direct the Director to carry out the proposal or refrain from carrying out the proposal and to take such action as the Tribunal considers the Director ought to take, and for such purposes the Tribunal may substitute its opinion for that of the Director.
A party to a proceeding may appeal from the Tribunal's decision to the Divisional Court on a question of law and on any other question to the Minister of the Environment.
When the Director proposes to refuse to issue or renew, or to suspend or revoke, a licence to perform an extermination, a licence to operate an extermination business, a licence to sell pesticides, or other types of pesticides licences, the permit holder may require a hearing by the Tribunal.


Environmental Bill of Rights, 1993
Purpose
The purposes of the Act are:
(a) to protect, conserve, and where reasonable, restore the integrity of the environment by the means provided in the Act;
(b) to provide sustainability of the environment by the means provided in the Act;
(c) to protect the right to a healthful environment by the means provided in the Act.
Reason for Hearing
The Tribunal's Role
Appeal
Any person resident in Ontario may seek leave to appeal a decision whether or not to implement a proposal for a Class I or II instrument if the person seeking leave to appeal has an interest in the decision, and another person has a right under another Act to appeal from a decision whether or not to implement the proposal.
Leave to appeal shall not be granted unless it appears to the Tribunal that:
(1) there is good reason to believe that no reasonable person, having regard to the relevant law and to any government policies developed to guide decisions of that kind, could have made the decision;
(2) the decision in respect of which an appeal is sought could result in significant harm to the environment.
No right of appeal


Ontario Water Resources Act
Purpose
To prevent the impairment of the quality and quantity of any water body (such as a lake, river or well).
Reason for Hearing
The Tribunal's Role
Appeal
The Director of Approvals shall require a hearing when a proposed sewage works enters another municipality or prior to defining an area of public water and sewage service. The Director may require a hearing with respect to a sewage works within a single municipality.
The Environmental Review Tribunal decides whether a certificate of approval should be issued, and if so, what its terms and conditions should be. The Tribunal is not required to hold a hearing if no person objects to the proposed works or if the objections are insufficient. The Tribunal's decision must be implemented by the Director.
A party to a proceeding may appeal the Tribunal's decision to the Divisional Court on a question of law and on any other question to the Lieutenant Governor in Council.
A person named in an order issued by the Director may require a hearing by the Tribunal.
When the Director refuses to issue or renew, or cancels or suspends a licence, permit or imposes terms and conditions in issuing an approval, licence or permit, the applicant may require a hearing by the Tribunal.
When the Director alters the terms and conditions of an approval, licence or permit or imposes new terms and conditions after it is issued, the approval holder may require a hearing by the Tribunal.
When the Director proposes to refuse to issue or renew, or revoke a well construction permit, a well contractor licence or a well technician licence or suspend a well contractor licence or a well technician licence, or impose terms and conditions in a well construction permit, or to alter the terms and conditions in a well construction permit, the permit holder may require a hearing by the Tribunal.
The Environmental Review Tribunal may confirm, alter or revoke the action of the Director that is the subject-matter of the hearing and may order the Director to take such action as the Tribunal considers the Director should take and for such purpose the Tribunal may substitute its opinion for that of the Director.
The Environmental Review Tribunal may order the Director to carry out the proposal and to take such action as the Tribunal considers the Director ought to take, and for such purposes may substitute its opinion for that of the Director.
A party to a proceeding may appeal from the Tribunal's decision to the Divisional Court on a question of law and on any other question to the Minister of the Environment.


Environmental Protection Act
Purpose
To provide for the protection and conservation of the natural environment.
Reason for Hearing
The Tribunal's Role
Appeal
The Director of Approvals shall require a hearing for some types of waste disposal sites, and may require a hearing for other types. As well, the Tribunal may be required to determine whether a municipal by-law should apply to a proposed waste disposal site.
The Environmental Review Tribunal decides whether a Certificate of Approval should be issued, and if so, what its terms and conditions should be. The Tribunal's decision must be implemented by the Director.
A party to a proceeding may appeal the Tribunal 's decision to the Divisional Court on a question of law and on any other question to the Lieutenant Governor in Council.
A person named in an order issued by the Director may require a hearing by the Tribunal.
When the Director refuses to issue or renew a Certificate of Approval, licence or permit, or imposes terms and conditions in issuing a Certificate of Approval, licence or permit, the appellant may require a hearing by the Tribunal.
The Environmental Review Tribunal may confirm, alter or revoke the action of the Director that is the subject-matter of the hearing and may order the Director to take such action as the Tribunal considers the Director should take, and for such purpose the Tribunal may substitute its opinion for that of the Director.
A party to a proceeding may appeal from the Tribunal's decision to the Divisional Court on a question of law and on any other question to the Minister of the Environment.
When the Director suspends or revokes a Certificate of Approval, licence or permit, the instrument holder may require a hearing by the Tribunal.


Niagara Escarpment Planning and Development Act
Purpose
To provide for the maintenance of the Niagara Escarpment and land in its vicinity substantially as a continuous natural environment, and ensure only such development occurs as is compatible with that natural environment.
Reason for Hearing
Hearing Officer's Role *
Next Step
A person who receives notice of the Niagara Escarpment Commission's decision regarding a development permit may appeal that decision to the Minister of Natural Resources, who in turn, is required to appoint a Hearing Officer to conduct a hearing at which representations may be made respecting the decision.
After the hearing, the Hearing Officer shall report to the Minister a summary of the representations made, together with his or her opinion on the merits of the decision.
The decision of the NEC is deemed to be confirmed if the opinion of the officer expressed in his or her report is that the decision is correct and should not be changed, and the decision is not appealed by a local municipality, a county or a regional municipality.**
If the NEC's decision is not deemed to be confirmed, the Minister, after considering the Hearing Officer's report, decides whether to confirm, vary or substitute the NEC's decision.
Where the NEC prepares or receives an application to amend the Niagara Escarpment Plan, it is required to appoint one or more Hearing Officers for the purpose of receiving representations from the public.***
A Hearing Officer shall report to the NEC a summary of the representations made together with his or her opinion regarding whether the proposed amendment should be accepted, rejected or modified with reasons.
After considering the Hearing Officer's report, the NEC submits its recommendations to the Minister. In some cases, the Minister may make the final decision. In other cases, the Minister may make a recommendation to Cabinet.

*Members of the Environmental Review Tribunal may be appointed as Hearing Officers under the *Niagara Escarpment Planning and Development Act* ("*NEPDA*") to hear appeals of Niagara Escarpment Commission decisions on development permits and to conduct hearings on applications to amend the Niagara Escarpment Plan.

**Since the proclamation of the *Red Tape Reduction Act, 2000*, S.O. 2000, c. 26 (Bill 119) amendments to the *NEPDA*, deemed confirmations can also occur where the parties have reached a settlement on the conditions of the development permit. The decision of the NEC may be deemed confirmed prior to going to the Minister if (a) the decision was to issue a development permit; (b) the parties who appeared at the hearing have agreed on all of the terms and conditions that should be included in the development permit, and these are set out in the Hearing Officer's report; and (c) it is the Hearing Officer's opinion in the report that the decision to issue the development permit with the agreed terms and conditions would be correct and should not be changed.

***Hearing Officers are normally appointed by the NEC to conduct hearings on proposed Plan amendments only if objections are made to the proposed amendments.

Appendix C

Public Outreach Presentations		
Date	**Presented To**	**Presenter**
April 19, 2000	Support Our Supports Conference, Society of Ontario Adjudicators and Regulators	Susan Dunn
May 24, 2000	Havergal College	Pauline Browes
May 31, 2000	Regina Mundi Separate School	Pauline Browes
June 11, 2000	Conference of Canadian Council of Administrative Tribunals	Carl Dombek/Mark Frawley
June 13, 2000	Ministry of the Environment Expert Witness Course	Knox Henry
October 24, 2000	Ministry of the Environment Expert Witness Course	Knox Henry
November 20, 2000	Paralegal Class Success Business College	Pauline Browes
February 7, 2001	University of Waterloo	Len Gertler
February 27, 2001	Ministry of the Environment Expert Witness Course	Carl Dombek
March 9, 2001	Buxton School, Williamstown, Massachusetts USA	Pauline Browes/Karen Beattie
March 22, 2001	York University LL.M. Program in Administrative Law	Karen Beattie
March 26, 2001	Planning Course University of Waterloo	Len Gertler

Appendix D

Website Statistics – Downloads

During the period April 1, 2000 to March 31, 2001

Most Popular Downloads

File Name	Downloads
Environmental Protection Act	16,825
Ontario Water Resources Act	10,116
Environmental Assessment Act	7,420
Adams Mine Decision	2,892
Pesticides Act	1,886
Environmental Bill of Rights, 1993	988
Concerned Citizens of Haldimand Inc. v. MOE	964
Laurel Springs Water v. MOE	958
Appeals Brochure	862
923982 Ontario Ltd., United Canadian Malt, Norampac, Outboard Marine Corp., Uniroyal Chemical v. MOE	766
Maddaloni et al. v. MOE	755
Philip Enterprises v. MOE	745
Kolodziejski v. MOE	734
Annual Report	730
ABC Group Exterior Systems v. MOE	724
Shouldice Cement Products v. MOE	696
Jacuzzi Canada v. MOE	692
The Estate of James Maxwell, Gilles Letourneau and 914158 Salvatore T. Crupi and 614430	686
Rules of Practice	664

Appendix E

Learning Program 2000 – 2001		
Date	**Topic**	**Speakers**
June 23, 2000	**Environmental Adjudication in Alberta and Manitoba** - Mandate, Objectives, Process, Issues **Canadian Environmental Assessment Agency:** Overview and Protocol to Joint Assessments, Bi-lateral Agreement, Canada-Ontario	Gilbert Van Ness, General Counsel, Alberta Environmental Appeal Board Rory Grewar, Secretary, Manitoba Clean Environment Commission Louise Knox, Regional Director, Canadian Environmental Assessment Agency Eugene Macchione, Environmental Assessment and Approvals Branch, Ontario Ministry of the Environment
September 21, 2000	**Air Quality** **Air Pollution Regulation in Ontario** Standards, Measurement, Evaluation, Enforcement	Professor Miriam Diamond, University of Toronto Dr. Walter Chan, Integrated Environmental Planning Division, Ontario Ministry of the Environment
November 24, 2000	**Groundwater Management – One Municipality's Approach to Managing Their Resources** Quality, Quantity; Ecology of Watershed Lands; Policies for Management **Ecological Land Classification for Southern Ontario**	Steve Holysh, Hydrogeologist, Regional Municipality of Halton Harold Lee, principal author of the publication
February 8, 2001	**Agency Sector Reform – Update**	Richard Prial, Management Board Secretariat Murray Chitra, President, Society of Adjudicators and Regulators Peter Allen, Office of the Premier and Cabinet Office, Public Appointments Secretariat

Appendix F

Key Performance Goals and Objectives Fiscal Year 2001-2002

Outreach
Core Business

Goals/Outcomes	Measures	Targets/ Standards	2001-2002 Commitments
Commitment #1: Website Access The Tribunal will use its website to communicate with its customers.	The Tribunal will track the number of visitors to the site to monitor its use.	Continued increase in the use of the site.	Website will be updated each business day to ensure optimal delivery. Web server will be "up" 99% of the time. New Rules of Practice, Guidelines, policies, etc. will be posted as approved. Staff will respond to e-mail communication within 24 business hours.
Commitment #2: Public Education and Information Sessions will be used to promote public awareness and knowledge of the Tribunal's mandate and hearing process.	The Tribunal will offer these services to interested groups and seek out speaking engagements where the Tribunal's profile can be showcased.	Present to a growing number of key audiences.	To contact and make presentations to representatives of key organizations whose mandate requires them to follow the Tribunal's processes.

Alternative Dispute Resolution
Core Business

Goals/Outcomes	Measures	Targets/ Standards	2001-2002 Commitments
Commitment #3: ADR Services The Tribunal will offer ADR services in all appeal cases, where appropriate, and on request in application cases, prior to the commencement of the hearing.	When all parties agree to participate, mediation meetings will be held at least 30 days prior to the commencement of the hearing.	Increase the number of cases receiving mediation.	Continue to offer mediation services in every appeal and at the request of the parties in applications. Questionnaires will be sent to all parties at the completion of the ADR session to ascertain their level of satisfaction with the ADR process and the Tribunal's involvement. The Tribunal will monitor the success of mediation meetings by tracking the cases that are resolved prior to the hearing. The Tribunal will monitor the cost of mediation meetings.

Staff Processing of Hearings: Core Business

Goals/Outcomes	Measures	Targets/ Standards	2001-2002 Commitments
Commitment #4: Improve Timeliness in Scheduling Hearings The Tribunal will improve timeliness in scheduling hearings.	Hearings will be scheduled within the timeliness standard.	Hearings will be scheduled within 30 calendar days from date of receipt of the application/ appeal and 7 calendar days from the date the Tribunal receives all necessary information/ documentation from the parties.	In 80% of cases scheduled, staff will adhere to the target. Administrative procedural manuals will be updated to reflect this standard and manuals will be used in the orientation of new staff.
Commitment #5: Electronic Service Delivery (ESD) The Tribunal will continue its commitment to ESD.	ESD option will be available for all applicants/appellants to file applications/appeals and written submissions.	Parties will be able to access ESD options in all types of cases by April 1, 2003.	Administrative procedures will be reviewed and modified to accept applications/appeals filed electronically. The impact of ESD on Tribunal Rules, Guidelines and Policies will be reviewed. The Tribunal will pilot the receipt of written submissions during the NEC Plan Review hearing to be conducted 2001. Surveys will be conducted at the completion of the hearing to receive feedback from parties making submissions electronically.

Hearing and Decision Making Core Business

Goals/Outcomes	Measures	Targets/ Standards	2001-2002 Commitments
Commitment #6: Everyone participating in a hearing will be treated with courtesy and respect by Tribunal Members.	The Tribunal will survey hearing participants through questionnaires at the completion of the hearing to monitor respect and courtesy. All complaints will be investigated in accordance with the Tribunal's Complaints Policy.	To provide questionnaires that monitor respect and courtesy accorded to hearing participants by Tribunal members and investigate complaints in accordance with the Tribunal's Complaints Policy.	Results of Hearing Questionnaires will be reported in the Tribunal's Annual Report. All complaints will be treated seriously and the Tribunal will comply with its Complaints Policy.
Commitment #7: Tribunal will monitor the cost of Hearings to ensure the maximum efficient use of public funds.	The cost associated with the Hearing and Decision Making processes will be tracked, including the Tribunal Member's time, travel, accommodation, meals, telephone expenses, etc.	The cost associated will be tracked.	Track costs and compare to previous fiscal year.

Appendix G

Financial Report

General Revenues for the Operations of the Tribunal

Standard Income	Revised Estimates	Approved Budget	Actual Expenditures
Salaries & Wages	$ 150,000	$ 150,000	$ 148,654
Employee Benefits	45,000	45,000	44,821
Transportation and Communication	15,000	15,000	15,127
Services	30,000	30,000	28,945
Supplies	10,000	10,000	9,873
Total	$ 250,000	$ 250,000	$ 247,420

Additional Funds allocated for the Water Projection & Regulation Initiative

Standard Income	Revised Estimates	Approved Budget	Actual Expenditures
Transportation and Communication	$ 0	$ 0	$ 0
Services	50,000	50,000	50,000
Total	$ 50,000	$ 50,000	$ 50,000

NOTE: The Environmental Review Tribunal also received reimbursement of $1,150,000 from the Ministry of Natural Resources for expenditures associated with the Water Projection and Regulation Initiative.